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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,073	09/13/2002	Peter Unger	B0074-US01	2610

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GAMBRO, INC  
PATENT DEPARTMENT  
10810 W COLLINS AVE  
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EXAMINER

KIM, SUN U

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/065,073

Applicant(s)

UNGER ET AL.

Examiner

John Kim

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7, 13, 15 and 18-21 is/are rejected.
- 7) ☒ Claim(s) 8-12, 14, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 1723

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-6, drawn to a container set, classified in class 604, subclass 410.

II. Claims 7-21, drawn to a cassette or an apparatus for blood processing with a pressure pad, classified in class 210, subclass 109.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because any container or container set can be used. The subcombination has separate utility such as storing fluid and inactivating virus in fluid via bag with ultraviolet light passage.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Ms. Laura Butterfield on 4/15/03 a provisional election was made with traverse to prosecute the invention of Group II, claims 7-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-6 are

Art Unit: 1723

withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 7, 13, 15, 18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 92/00145 (hereinafter referred to as WO '145). WO '145 teaches a cassette comprising a first cassette portion (12) for receiving a container set having a container (1) containing blood products and having a closure device (10) i.e. clamp and connected to a plurality of containers (2, 3) via tubes (4, 5) and a second cassette portion (13) comprising a pressure displacement body (17) i.e. pressure pad connected to air pressure source (39) and a cassette receiving pathway (19) for accommodating hoses connecting blood container (1) to side containers (2, 3) wherein two cassette portions are connected by a hinge (16) and locked together by means of a locking bar or strap (20) which engages a pin or stud (21) (see figures 1-5; page 9, line 14 – page 11, line 7; page 12, line 25 – page 14, line 20).

Art Unit: 1723

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '145 as applied to claim 18 above, and further in view of U.S. Patent No. 5,709,991 (hereinafter referred to as Lin et al). WO '195 teaches the cassette as described in above paragraph. Claims 19-20 essentially differ from the apparatus of WO '195 in reciting a source of radiation or heat for irradiating or heating at least a portion of the cassette to irradiate or heat at least one container therein. Lin et al teach that a source of ultraviolet radiation i.e. inherent heat source is provided to a bag containing blood products to photoactivate and inactivate microorganisms in the bag (see col. 6, lines 15-26; col. 9, line 15 – col. 12, line 36; col. 14, lines 4-65). It would have been obvious to a person of ordinary skill in the art to provide a source of radiation or heat for irradiating or heating at least a portion of the cassette of WO '145 to irradiate or heat at least one container therein to inactivate microorganism in the blood products in containers as suggested by Lin et al.

9. Claims 8-12, 14 and 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Application data sheet shows that foreign priority is claimed for Swedish Application No. 0000866-4 filed 3/16/00. However, the declaration shows that the priority to said Swedish Application is not claimed. Please correct this discrepancy.

Art Unit: 1723


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,406,458 and 6,398,706 and 4,976,851 and 3,895,741 and 5,829,634 and 5,836,908 teach apparatuses with pressure pads. U.S. Patent No. 5,279,797 and 6,039,719 and 5,098,371 teach multiple containers.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (703) 308-2350. The examiner can normally be reached on weekdays from 7:00 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached on (703) 308-0457. The fax phone number for official response after final action is (703) 872-9311, and the fax phone number for all other official faxes is (703) 872-9310.

When sending a draft amendment by fax, please mark the paper as "DRAFT"; otherwise, mark the paper "OFFICIAL". This will expedite the processing of the paper.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

  
**John Kim**  
**Primary Examiner**  
**Art Unit 1723**

J. Kim  
April 17, 2003